

copy provided 8/31/05  
EX 5 87a  
D.H. DeGo

August 18, 2005

Larry Jensen  
NELCO  
P.O. Box 282  
Price, Utah 84501

Stephen Powell  
dba Powell Rock  
376 Giruard Avenue  
Price, Utah 84501

Dan Powell, dba Emery Resources,  
148 South 100 East  
Spanish Fork, Utah 84660

E. J. Stokes  
52 South 350 East  
North Salt Lake, Utah 84054

Re: Cherry Hill Park Mine.

Dear Gentlemen,

There has been no response to my letter of June 29, 2005. To the knowledge of the Division, there has also been no change in the conditions at the mine site. The Division has determined that it is obligated to take additional action to reclaim all or part of the mine site to bring it into compliance with the requirements of the Utah Mined Land Reclamation Act.

The Board issued its order in May of 2003 requiring that the mine be reclaimed or full bonding provided. There has been a long history of efforts by the Division and others to reclaim and re-open the mine, including the removal and sale of stockpiled material and establishment of the escrow fund pursuant to the Reclamation Agreement. The Reclamation Agreement was terminated and the escrowed funds forfeited due to numerous problems on October 20, 2003. Although a portion of the mine was reclaimed by Larry Jensen d/b/a NELCO under an agreement with Stephen and/or Dan Powell, there remains over 12 acres of inadequately reclaimed or un-reclaimed land.

The Division has completed its calculation of the current bonding requirements for the entire site. A copy is enclosed. The estimate for reclaiming the entire site is \$35,000. To insure reclamation of the mine the Division currently holds the \$23,000 in escrowed funds and the small mine bond of \$17,000.

The Division had hoped that mining would begin this summer pursuant to the small mine permit issued to Larry Jensen on five of these acres, but apparently the operation is not ready to proceed. The small mine permit fee has been renewed, but the permit remains in an inactive status. Since mining was never begun, the bond posted is subject to withdrawal. Unless the small mine bond is made permanent, and liability for reclamation of the existing disturbance within the small mine permit area is made part of the surety obligation, this bonding does not provide the necessary assurances to the Division. A commitment by the operator or owner regarding the status of the bond would alleviate some of the Division's concerns. If the small mine is activated, or the bond made applicable to the current disturbance within the small mine permit area, then the amount held in escrow could be reduced by about \$5000 and that sum paid to the appropriate persons.

If the small mine permit does not commence mining, or the bond is not made applicable to the current disturbances within the small mine permit area regardless of further mining, then the estimated cost of reclamation is more than the sum currently held in escrow (even discounting the escalation for future years and the 10% contingency the estimated costs are \$25,600 which still exceeds the escrow). In such event, the Division may proceed to file a Request for Agency Action before the Board, asking that the small mine permit be terminated so that the Division can proceed to contract for reclamation of the entire site.

You are hereby given notice that unless additional bonding assurances are provided or reclamation commenced within 60 days that the Division will proceed with advertising and other actions as necessary to contract for reclamation of the Cherry Hill mine site. In the event the costs of reclamation exceed the funds available, the Division will pursue its remedies against the responsible parties including Emery Resources, Dan Powell, Stephen Powell and others who may have had control or ownership of the site and are thereby responsible for the disturbances and for reclamation under Utah law.

Sincerely,

Steven F. Alder  
Assistant Attorney General

cc: Mary Ann Wright  
Daron Haddock

Doug Jensen

Daron Hadood Ex 4

It's Section for DOGM Use:

Assigned DOGM File No.: S 10991048

DOGM Lead: LMK

Permit Fee \$ 1500 Ck# 12148

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING  
1594 West North Temple Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
Telephone: (801) 538-5291 Fax: (801) 359-3940

RECEIVED

NOV 17 2004

DIV OF OIL GAS & MINING

**NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS**

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1987, and the General Rules as promulgated under the Utah Minerals Regulatory Program.

"Small Mining Operations" means mining operations which disturb five or less surface acres at any given time.

\*\*\*\*\*

**I. GENERAL INFORMATION (Rule R547-3-104)**

1. Name of Mine: Cherry Hill Park Mine
2. Name of Person or Entity Applying for Permit: Nelco Contractors Inc.  
Address: \_\_\_\_\_  
City, State, Zip: Price Utah 84501  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: ne nelco.net

Company ( ) Corporation ☒ Partnership ( ) Individual ( )

Other ( ) - specify type: \_\_\_\_\_

A corporation must be registered with the State of Utah, Division of Corporations. Are you currently registered to do business in the State of Utah? ☒ Yes ☐ No

Business License # 229780-5501

Registered Agent (as identified on business license): Neil Frandsen  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

3. Name of Operator (if different from #2) SAME  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**If Partnership or Individual:**Name of 1<sup>st</sup> owner / partner: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Name of 2<sup>nd</sup> owner / Partner: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**If Corporation or Limited Liability Entity:**Name of Officers: Neil FrandsenTitle: PresidentLarry JensenTitle: Vice Pres

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**4. Permittee / Operator Representative (if different from #3):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: IL

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**5. Ownership of Land Surface:**Private (Fee) ☒Public Domain (BLM) ☐National Forest (USFS) ☐State Trust Land/School Sections ☐State Sovereign Lands ☐

Other (please describe): \_\_\_\_\_

Name E. J. StokesAddress P.O. Box 346 Centerville UT. 84014

Name \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**6. Ownership of Minerals:**Private (Fee) ☒Public Domain (BLM) ☐National Forest (USFS) ☐State Trust Land/School Sections ☐State Sovereign Lands ☐

Other (please describe): \_\_\_\_\_

Name EJ StokesAddress SAME

Name \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

BLM Lease or Project File Number(s) and/or USFS assigned Project Number(s): \_\_\_\_\_

Utah State Lease Number(s): \_\_\_\_\_

Name of Lessee(s): \_\_\_\_\_

7. Have the above surface and mineral owners been notified in writing?  
 Yes ☒ No ☐

If no, why not? \_\_\_\_\_

*Please be advised that if State Trust Lands are involved, notification to the Division of Oil, Gas and Mining alone does not satisfy the notification requirements of Mineral Leases upon State Trust Lands. Exploration or mining activity on State Trust Lands requires a minimum of 60 days notice to the Trust Lands Administration prior to commencing any activities. Please contact the School Institutional Trust Lands Administration (SITLA) at (801) 530-5500 for notification requirements.*

8. Does the Permittee / Operator have legal right to enter and conduct mining operations on the land covered by this notice? Yes ☒ No ☐

## II. PROJECT LOCATION & MAP (Rule R047-3-105)

1. Project Location (legal description):

County(ies): Utah

NW 1/4, of \_\_\_\_\_ 1/4, of \_\_\_\_\_ 1/4: Section: 36 Township: 11 S Range: 8 E  
 \_\_\_\_\_ 1/4, of \_\_\_\_\_ 1/4, of \_\_\_\_\_ 1/4: Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_  
 \_\_\_\_\_ 1/4, of \_\_\_\_\_ 1/4, of \_\_\_\_\_ 1/4: Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_

UTM East 501375 (if known) UTM North 4408130 (if known)Name of Quad Map for Location: \_\_\_\_\_ Kyune

2. An accurate topographic base map showing the location of the proposed small mining operation must be submitted with this notice. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted in sufficient detail so that they can be located on the ground. It is recommended that the Permittee / Operator also photo document, plot and label any pre-existing disturbances in the immediate vicinity that he is not responsible for.
3. The proposed (5 acre or less) disturbed area boundary (including access/haul roads) should be marked in the field ON THE GROUND with metal T-Posts (or with some other marker of equal effectiveness). Markers should be appropriately spaced so that the next marker in either direction is clearly visible with the naked eye.

III. OPERATION PLAN (Rule R647-3-106)

1. Type of mining: Surface ☒ Underground ☐
2. Mineral(s) to be mined: Limestone
3. Amount of material to be extracted, moved or proposed to be moved: 78,650 Tons
4. Will any water, liquid chemicals, reagents, or other solutions be used, produced or discharged as part of the mining or milling process?  
Yes ☐ NO ☒ If yes, please describe (add extra pages if needed)  
\_\_\_\_\_  
\_\_\_\_\_
5. Provide a brief description of the proposed mining operation and onsite processing facilities (add extra pages if necessary).  
Drill and shoot surface Rock to an average of 7'6" depth,  
Screen and crush shot materials, then reclaim behind  
Crushing and stockpile operation  
\_\_\_\_\_
6. ☐ New Road(s): Length \_\_\_\_\_ (ft) Width \_\_\_\_\_ (ft)
7. ☐ Improved Road(s): Length \_\_\_\_\_ (ft) Width \_\_\_\_\_ (ft)
8. Total project surface acreage to be disturbed: 5 (acres) PLEASE SPECIFY EXACT ACREAGE - (this will be used to determine surety bond amount - see #VI).
9. Proposed startup date of project (month, year) November 2004
10. Proposed completion date of project, if known (month, year) November 2006

IV. OPERATION AND RECLAMATION PRACTICES (Rule R647-3-107, 108 & 109)

The reclamation and operation obligation is to keep the area clean and safe, minimize hazards to public safety, return the land to a useful condition, and reestablish at least 70 percent of the premining vegetative ground cover. To accomplish this, the Permittee / Operator will need to perform reclamation concurrently, or at the completion (within one (1) year) of mining:

1. Keep the mining operation in a safe, clean, and environmentally stable condition.
2. Permanently seal all shafts and tunnels to prevent unauthorized or accidental entry.
3. Plug drill holes with a five foot cement surface plug. Holes that encounter fluids are to be plugged in the subsurface to prevent aquifer contamination.
4. Construct berms, fences, or barriers, when needed, above highwalls and excavations.
5. Remove, isolate, or neutralize all toxic materials in a manner compatible with federal and state regulations.
6. Remove all waste or debris from stream channels.

7. Dispose of any trash, scrap metal, wood, machinery, and buildings.
8. Conduct mining activities so as to minimize erosion and control sediment.
9. Reclaim all roads that are not part of a permanent transportation system.
10. Stockpile topsoil and suitable overburden prior to mining.
11. Stabilize highwalls by backfilling or rounding to 45 degrees or less, where feasible; reshape the land to near its original contour, and redistribute the topsoil and suitable overburden.
12. Properly prepare seedbed to a depth of six inches by poking, ripping, discing, or harrowing. Leave the surface rough.
13. Reseed disturbed areas with adaptable species. (The Division recommends a mixture of species of grass, forb, and browse seed, and will provide a specific species list if requested.)
14. Plant the seed with a rangefinder or farm drill, or broadcast the seed. Fall is the preferred time to seed.

**V. VARIANCE REQUEST (Rule R647-3-110)**

Any variance request must be approved in writing by the Division

Yes ☒ No ☐

Any planned deviations from Rules R647-3-107, Operation Practices, R647-3-108, Hole Plugging Requirements, or R647-3-109, Reclamation Practices, as summarized above, should be identified below and justification given for the variance request(s).

Item Number	Variance Request Justification
<del>10</del> 10	Some acreage will need Compost mixed with Subsoils for Reclamation

**VI. SURETY (Act 40-8-7(1)(c))**

**The surety must be provided to and approved by the Division prior to commencement of operations.**

The Utah Mined Land Reclamation Act (40-8-7 (1)(c) and 40-8-14 provides the authority that all mining operations furnish and maintain reasonable surety to guarantee that the land affected is reclaimed according to approved notices consistent with on-site conditions. The surety amount is based on the nature, extent and duration of operations. These amounts are based on data from current large mine surety and are used as a general guide, along with actual site conditions.

\$5,000 for the 1<sup>st</sup> acre; and

\$3,000 for each additional acre.

Acceptable forms of surety may include: certificates of deposit, letters of credit, surety bonds & cash. Please identify which type of surety you will post so we can provide you with the appropriate forms.

☐ Certificate of Deposit    ☒ Letter of Credit    ☐ Surety Bond    ☐ Cash  
☐ Other \_\_\_\_\_ (please identify)

(Please be advised that the State Treasurer's office may require additional monies to administer cash sureties)

Check if applicable:

☐ Reclamation surety is already posted with another regulatory agency (copy must be included as proof):  
 \$ \_\_\_\_\_ (amount) \_\_\_\_\_ (Agency name)



# **VII. PERMIT FEE [Mined Land Reclamation Act 40-8-7(1)(i)]**

The Utah Mined Land Reclamation Act of 1975 [40-8-7(1)(i)] provides the authority for the assessment of permitting fees. Commencing with the 1998 fiscal year (July 1 - June 30), permit fees are assessed to new and existing notices of intention, and annually thereafter, until the project disturbances are successfully reclaimed by the Permittee / Operator and released by the Division.

**Small Mine Notices require a \$150.00 fee which must accompany this application or it cannot be processed by the Division.**

**NOTICE:** The following person(s) are authorized and designated to receive Notices of Violations, Cessation Orders and all other Notices required by the Division to be given to the permittee or operator:

Name: Larry Jensen Nelco Contractors  
 Address: P.O. Box 582 Price Utah 84501  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

# **VIII. SIGNATURE REQUIREMENT**

I hereby verify that the foregoing information is true and accurate and commit to the reclamation of the aforementioned small mining project as required by the Utah Mined Land Reclamation Act (40-8) and the rules as specified by the Board of Oil, Gas and Mining.

(Please check the box and place your initials on the line provided)

- LJ ☒ I have enclosed the required permit fee.  
LJ ☒ I have also enclosed the appropriate reclamation surety amount or have made arrangements as to when the surety will be furnished.  
LJ ☒ I understand that I am not authorized to create any surface disturbance until the surety amount is posted and approved in writing from the Division of Oil, Gas and Mining and any other authorized regulatory agency.

**(Note: If a company or corporation, this form must be signed by the owner or officer who is authorized to bind the company/corporation to this Notice.)**

Signature of Permittee/ Operator/ Applicant: Larry Jensen  
 Name (typed or printed): Larry Jensen  
 Title/Position (if applicable): Vice President  
 Date: November 15, 2004



State of Utah

Department of  
Natural Resources

ROBERT L. MORGAN  
*Executive Director*

Division of  
Oil, Gas & Mining

LOWELL P. BRAXTON  
*Division Director*

OLENE S. WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

August 13, 2004

Ex 3 D. H.

Dan Powell  
Emery Industrial Resources  
148 South 100 East  
Spanish Fork, Utah 84660

Subject: Return of Small Mine Notice of Intent, Emery Industrial Resources, Inc.  
Cherry Hill Park Quarry, M/049/021, Utah County, Utah

Dear Mr. Powell:

The Division has reviewed your application for a small mine (received August 9, 2004) and has determined that we cannot process it. Therefore, we are returning it along with the \$150 check you provided as an application fee. Please find them enclosed.

Our investigation of the Cherry Hill site has determined that over 19 acres have already been disturbed. This amount of disturbance exceeds the amount allowed for small mining operations. In order for us to process a small mine application for this site, the existing disturbance would have to be reclaimed down to below five (5) acres. We are also aware that the Board of Oil, Gas & Mining has an outstanding order at this site that requires, among other things, a bond in the amount of \$43,500 to be posted. Without this order being satisfied, it will be difficult for the Division to process a permit for any further mining activity at this site.

If you have questions or would like to discuss the return of this application further, please don't hesitate to call me at (801)538-5325.

Sincerely,

Daron R. Haddock  
Permit Supervisor  
Minerals Regulatory Program

DRH:jb

Enclosure: Application & check

cc: Steve Alder, AAG

Sidney Balthasau Unrau, Esq.

O:\M049-Utah\M0490021-CherryHill\final\ReturnNOI-08132004.doc

This Section for DOGM Use:

Assigned DOGM File No.: S / /

DOGM Lead: \_\_\_\_\_

Permit Fee \$ \_\_\_\_\_ Ck # \_\_\_\_\_

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING  
1594 West North Temple Suite 1210  
Box 145801

Salt Lake City, Utah 84114-5801  
Telephone: (801) 538-5291 Fax: (801) 359-3940

RECEIVED  
AUG 05 2004  
DIV. OF OIL, GAS & MINING

NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1987, and the General Rules as promulgated under the Utah Minerals Regulatory Program.

"Small Mining Operations" means mining operations which disturb five or less surface acres at any given time.

\*\*\*\*\*

I. GENERAL INFORMATION (Rule R647-3-104)

1. Name of Mine: Cherry Hill Park
2. Name of Person or Entity Applying for Permit: Emery Industrial Resources, Inc.  
Address: 148 South 100 East  
City, State, Zip: Spanish Fork, Utah 84660  
Phone: (801) 369-0793 Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Company ( ) Corporation ☒ Partnership ( ) Individual ( )  
Other ( ) - specify type \_\_\_\_\_

A corporation must be registered with the State of Utah, Division of Corporations. Are you currently registered to do business in the State of Utah? ☒ Yes ☐ No

Business License # To Be Provided

Registered Agent (as identified on business license): Dan L. Powell

Address: 148 South 100 East  
City, State, Zip: Spanish Fork, Utah 84660  
Phone: (801) 369-0793 Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

3. Name of Operator (if different from #2) \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Receipt #231857

Ex #1  
Daron Haddock

MAW

**FILED**

JUN 23 2003

SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING**

**DEPARTMENT OF NATURAL RESOURCES**

**STATE OF UTAH**

**IN THE MATTER OF THE PETITION  
BY THE DIVISION OF OIL, GAS AND  
MINING FOR AN ORDER THAT DAN  
POWELL, AND EMERY INDUSTRIAL  
RESOURCES, INC. CEASE MINING  
AND BE ORDERED TO BEGIN  
IMMEDIATE RECLAMATION OF  
THE CHERRY HILL PARK MINE,  
UTAH COUNTY, UTAH,**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

Docket No. 2003-004

Cause No. M/049/021

This cause came before the Board Oil, Gas and Mining ("the "Board") on Wednesday, May 28, 2003, at 10:00 a.m. in the Hearing Room at the Utah Department of Natural Resources located at 1594 West North Temple Street, Salt Lake City, Utah.

The following Board members were present and participated in the hearing of this matter:

- W. Allan Mashburn, Chairman
- Robert J. Bayer
- Stephanie Cartwright
- Douglas E. Johnson
- Samuel Quigley
- J. James Peacock
- Kent R. Petersen

Respondent Dan Powell, a natural person, represented himself. Mr. Powell testified on his own behalf.

As described below, Respondent Emery Industrial Resources, Inc. is a corporate entity and was unrepresented.

The Division of Oil, Gas and Mining (Division) was represented by Steven Alder, Assistant Attorney General. Messrs. Wayne Hedberg, Lynn Kunzler, and Doug Jensen, testified on behalf of the Division.

The Board was advised by Kurt E. Seel, Assistant Attorney General.

At the close of oral argument, the Board deliberated to discuss the matter, to vote, and then returned to the hearing room to announce its decision.

NOW THEREFORE, the Board, having fully considered the Respondents' oral argument; the written briefs, arguments, and memoranda of the Division; the record in this matter; and being fully advised, the Board voted unanimously to make and enter its Findings of Fact, Conclusions of Law, and Order, as follows:

#### **FINDINGS OF FACT**

1. Notice of the Request for Agency Action, and of the hearing, was duly served on Respondents and duly published as required by UTAH ADMINISTRATIVE CODE R641-106-100.
2. Emery Industrial Resources, Inc. (EIR) is a corporation incorporated under the laws of the State of Utah.
3. EIR is not a "natural" person as that term is utilized in UTAH ADMINISTRATIVE CODE R641-102-100.
4. Mr. Dan Powell is not an attorney authorized to practice law in the State of Utah.
5. On July 8, 1992, Dan L. Powell, d/b/a Emery Industrial Resources, filed a Notice of Intention to Commence Small Mine Operations for an area known as the Cherry Hill Park Mine, located in Utah County, Utah, and generally described by Division permit no. M/049/021.

6. Emery Industrial Resources, Inc. was incorporated in December 22, 1992.
7. On July 27, 1994, an inspection of the Cherry Hill Park Mine by the Division revealed that the area disturbed by mining operations had exceeded the 5-acre limit for a small mining operation.
8. The Division received an original Notice of Intention to Commence Large Mining Operations on November 14, 1994, filed by Dan L. Powell, as an authorized representative and agent for EIR.
9. Between November 14, 1994 and March 3, 1999, the mine operator continued mining operations at the Cherry Hill Park Mine, and the Division negotiated with Respondents to complete deficiencies in EIR's Large Mine Notice of Intention.
10. Respondents Powell and EIR submitted a revised Notice of Intention to Commence Large Mining Operations on March 3, 1999.
11. One March 12, 2002, the Division had a meeting with the Respondents to discuss the status of the mining operation and their response to the outstanding technical deficiencies. The Respondents agreed to provide a formal response to the Division no later than March 22, 2002.
12. On May 14, 2002, the Division issued a Notice of Non-Compliance to the Respondents, via certified mail and facsimile, ordering suspension of operations, posting of a reclamation surety in the amount of \$43,500.00, and submitting a response to the remaining permit deficiencies.

13. On January 9, 2003, the Division issued a proposed Agency Action to the Respondents, and had the Action served via personal service on January 14, 2003, by the Utah County Sheriff.

14. On January 28, 2003, an Informal Conference was held between the Division and the Respondents to discuss the January 9, 2003 proposed Agency Action.

15. On February 20, 2003, the Division Director sent to the Respondents his written Findings of Fact, Conclusions of Law & Order in response to the January 28, 2003 Informal Conference. The Order required: 1) Respondents to immediately cease all mining operations until written approval has been received from DOGM; 2) DOGM to inspect and file written report on disturbances within 10 days; 3) if within 30 days EIR has not provided acceptable form and amount of surety, DOGM will initiate an agency action before the Board asking for immediate reclamation and payment of civil penalties. The Respondents received this letter on February 26, 2003.

16. Pursuant to the Respondents' March 19, 2003 phone request for an extension of time, on March 20, 2003 the Division extended the Respondents' deadline to submit the reclamation surety to April 3, 2003.

17. As early as November 1994, the Respondents were advised of the statutory requirement that they would need to submit an adequate mining reclamation bond prior to final approval of the Large Mine Operation Notice of Intent.

18. On June 28, 2002, Respondent EIR was given its first formal written demand to post a surety in the amount of \$43,500.00, and since that date Respondents have failed to post the required surety.

19. The Division has provided numerous extensions of time to obtain the required surety including two extensions since the Informal Conference held Jan 28, 2003.

20. Most or all of the materials mined at the Cherry Hill Park Mine consisted of consolidated limestone, the extraction of which required physical breaking of the rock.

21. The Disturbed Area at the Cherry Hill Park Mine is currently 19 acres, more or less.

22. The testimony by Division staff concerning the estimates of the disturbed area and reclamation costs, demonstrate that these estimates were prepared in a professional and competent manner and reflect standard engineering practices in the mining and reclamation industry.

### **CONCLUSIONS OF LAW**

1. Jurisdiction over this matter is conferred upon the Board of Oil, Gas and Mining ("Board") by UTAH CODE ANNOTATED §40-8-6(2) (2002) which empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.

2. UTAH CODE ANNOTATED §40-8-16(3)(2002) provides that a Notice of Intention may not be withdrawn until the operator is provided an opportunity for a hearing before the Board.

3. UTAH CODE ANNOTATED §40-8-9(5)(a) provides for a public hearing before the Board, for any notice of violation or order of cessation of mining operations.

4. UTAH ADMINISTRATIVE CODE R641-102 requires that all entities whom are not natural persons be represented by attorneys.



5. Because there are insufficient reasons to deviate from the requirements of UTAH ADMINISTRATIVE CODE R641-102, nor did the Respondent move the Board to deviate from its procedural rules, Mr. Powell may not represent EIR in this matter.

6. Under Board regulation UTAH ADMINISTRATIVE CODE R641-102-100, Respondent Dan Powell may represent himself in this matter.

7. UTAH ADMINISTRATIVE CODE § R647-1-106 defines “gravel” and “sand” as “unconsolidated” materials deposited by sedimentary processes.

8. The materials mined at the Cherry Hill Park Mine were not sand, gravel, or rock aggregate as those terms are defined by the Regulations.

9. UTAH CODE ANNOTATED §40-8-16(2)(b)(2002) provides for denial of the large mine permit application, and the withdrawal of the existing small mining permit, for failure to post adequate reclamation surety.

10. As of July 27, 1994, the Cherry Hill Park Mine was a Large Mining Operation subject to the requirements of UTAH ADMINISTRATIVE CODE § R647-4.

11. The Respondents, EIR and Dan Powell, violated UTAH CODE §40-8-13(1)(a)(2002), UTAH CODE §40-8-14(1)(2002) (posting a surety in an amount as determined necessary by the Division prior to beginning mining as a large mining operation) and UTAH ADMINISTRATIVE CODE § R647-3-113.

### **ORDER**

A. Respondents’ Notice of Intention of Commence Small Mine Operations, M/049/032 is ordered withdrawn.

B. Respondents are ordered to cease any and all mining operations at the Cherry Hill Park Mine.

C. Respondents Dan Powell and Emery Industrial Resources, Inc. have sixty (60) days from the date of the Board's May 2003 hearing (May <sup>28</sup>~~23~~, 2003) to submit to the Division a mine reclamation surety in the amount of \$43,500, and in a form which is acceptable to the Division. If a Division approved surety in the amount of \$43,500.00 is timely submitted, the Respondents' Notice of Intent to Commence a Large Mining Operation is approved.

D. If Respondents fail to submit a Division acceptable mine reclamation surety within sixty days, the Board grants all additional relief requested by the Division in paragraphs A., B., C. and D. of the Prayer for Relief section of the Division's April 10, 2003 Notice of Agency Action in this matter. If Respondents fail to submit a surety which is satisfactory to the Division in compliance with paragraph "A" above, the additional relief sought by the Division shall automatically take effect and by this paragraph is so ordered. In summary, but not modifying the relief requested by the Division in paragraphs A - D of its Prayer, the Division has requested that Respondents be ordered to commence and diligently complete reclamation, that the Division be authorized to complete the reclamation and to seek recovery of all reclamation costs and expenses from the Respondents.

E. Notice re Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by UTAH CODE ANN. § 63-46b-10(e) and - 10(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. UTAH CODE ANN. § 63-46b-14(3)(a) and -

16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. UTAH CODE ANN. § 63-46b-13, entitled, "Agency review - Reconsideration," states:

1(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

*Id.* The Board also hereby notifies the parties that UTAH ADMINISTRATIVE CODE R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10<sup>th</sup> day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15<sup>th</sup> day of that month.

*Id.* See UTAH ADMINISTRATIVE CODE R641-110-200 for the required contents of a petition for rehearing. If there is any conflict between the deadline in UTAH CODE ANN. § 63-46b-13 and the deadline in UTAH ADMINISTRATIVE CODE R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

F. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.

G. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

SO ORDERED this 23 day of June, 2003.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING

By W. Allan Mashburn  
W. Allan Mashburn, Chairman

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** for Docket No. 2003-004, Cause No. M/049/021 to be mailed with postage prepaid, this 24 day of June, 2003, to the following:

**CERTIFIED MAIL**

7099 3400 0016 8895 8218  
Dan Powell  
262 South 800 West  
Payson, UT 84651

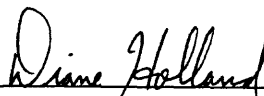
Dan Powell  
As Agent for Emery Industrial Resources  
P. O. Box 489  
Price, UT 84501

Kurt E. Seel, Esq.  
Assistant Attorney General  
Attorney for Board of Oil, Gas & Mining  
160 East 300 South, Fifth Floor  
P. O. Box 140815  
Salt Lake City, UT 84114-0815

Steven F. Alder, Esq.  
Assistant Attorney General  
Attorney for Division of Oil, Gas and Mining  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84116

Buck Rose  
Utah County Community Development  
100 East Center  
Provo, UT 84601

E. J. Stokes  
52 South 350 East  
North Salt Lake, UT 84054

  
\_\_\_\_\_